

Service Date: August 16, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
OF Burlington Northern Railroad)	
Company to discontinue its agency)	DOCKET NO. T-9235
operations at Big Sandy, Montana.)	ORDER NO. 5858

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles Dearden, 2718 Montana Avenue, Billings, Montana 59101,
appearing on behalf of Burlington Northern

FOR THE COMMISSION:

Geralyn Driscoll, Staff Attorney, 2701 Prospect Avenue,
Helena, Montana 59620-2601

Wayne Budt, Administrator, Transportation Division, 2701
Prospect Avenue, Helena, Montana 59620-2601

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

BACKGROUND

Burlington Northern Railroad Company (BN) applied to the Montana Public Service Commission (Commission or PSC) on May 25, 1988, for authority to discontinue its agency operations and dispose of the depot facility at Big Sandy, Montana.

The Commission noticed BN's application and a public hearing was held on June 23, 1988, at the Big Sandy City Hall. At the conclusion of the hearing the parties stipulated to a final order.

SUMMARY OF THE TESTIMONY

Izzy Conaway, Wesley Walters and William Allbright testified for BN.

Izzy Conaway. Mr. Conaway is the regional manager of station services for the Seattle region; Big Sandy is in the Seattle region. He testified that under BN's centralized system a shipper wanting service from Big Sandy would contact the Centralized Billing Center (CBC) established by BN in Great Falls. BN moved that Mr. Conaway's testimony in T-9158 be incorporated into this docket. That testimony explains the function of the Great Falls Centralized Billing Center. There was no objection to this motion and the Commission incorporates the testimony in T-9158 into this docket.

To order a railroad car, a Big Sandy customer telephones

the Great Falls CBC. The customer informs the CBC of the cargo, its destination and the date needed. The CBC orders from a BN car distributor who sends a car to the customer's loading facility. BN will pick up the car when it is loaded.

A customer may call the CBC toll free. The CBC operates 24 hours a day 7 days a week. It is a computerized operations linked with BN's entire computer system. The BN employee at the CBC orders cars through the Seattle transportation division. The customer prepares a bill of lading, which is a document that moves the shipment through the BN system. There are three options for processing the bill of lading. The customer can mail the bill of lading to Great Falls for signature, use BN power of attorney to sign the bill of lading or put the bill of lading into a locked box at the point of pickup.

Mr. Conaway testified that he contacted all the shippers using the Big Sandy facilities. The shippers are: Agri-Basic, Big Sandy Grain, Farmers Union Oil, Eagle Brokerage and Centennial. Mr. Conaway testified that none of the shippers he contacted objects to discontinuing the agency.

Mr. Conaway has contacted the agent, H.C. Boyd a protected employee who can exercise his seniority rights and displace a junior employee. Mr. Conaway testified that Mr. Boyd has informed him that he will exercise his seniority rights.

Mr. Conaway also testified that he has had no one contact him concerning the depot building, but BN would make its standard offer of donating it to a government entity, a civic group or selling it on bid to a private individual.

Wesley Walters. Mr. Walters is the train master and agent in Havre. He is responsible for supervising the clerical work at Havre, supervising the agencies throughout the area and is

generally responsible for train service in the area. He testified that Big Sandy currently has scheduled train service on Mondays and Wednesdays. If needed, a train can be brought up from Havre to Big Sandy four days a week. On cross-examination from the Commission, Mr. Walters testified that he has no knowledge of any plans to sell or discontinue the Big Sandy line.

William Allbright. Mr. Allbright, a senior cost analyst for BN, sponsored Exhibit A, "Accounting Exhibits for Proposal to Discontinue Agency Service at Big Sandy, Montana." Exhibit A shows the following cars received and forwarded at Big Sandy in 1985, 1986, 1987 and the first three months of 1988.

Cars Received and Forwarded

	1985	1986	1987	Jan.-Mar. 1988
Received	17	23	26	3
Forwarded	675	646	1,273	384
	<hr/>	<hr/>	<hr/>	<hr/>
Total	692	669	1,299	387

Exhibit A also contained net revenues for the Big Sandy agency calculated using the Belt/Carter and the BN formulas.

	Belt/Carter Formula of Net Revenue From Railway Operations	BN Formula of Net Results of Operation
1985	\$237,752	\$94,675
1986	124,587	33,520
1987	243,967	93,752
J-M 1988	60,793	22,350

Page 5 of Exhibit A showed the number of units of work handled

by the agent and the estimated time consumed. This exhibit uses a unit time factor calculated by BN as an estimate of how much time each function at an agency should take. This schedule showed 2,000 hours of time available and 402 hours required for agency work. These figures show 20 percent of the agent's available time is required for agency work and 80 percent of time is available for other work if there were any work.

Mr. Allbright testified that because of the Centralized Billing Center the agent in fact does not have 402 hours of work to do; the agent has nothing to do.

BN rested.

Public Witnesses' Testimony

Jim Mular, state legislative director of the Transportation and Communications Union (TCU), formerly the Brotherhood of Railway and Airline Clerks (BRAC), testified in opposition to the closure of the Big Sandy agency. Mr. Mular also requested that his testimony in Docket No. T-9237, the application to discontinue agency operations at Rudyard/Hingham, be incorporated into this docket. There were no objections to this motion and the Commission incorporated that testimony into this docket.

Mr. Mular testified that closing the agencies along the Hi-line results in long stretches of track without personnel and, in some cases, without radio contact. He also questioned where

such things as placards for hazardous waste will be stored in the event that the agencies are closed.

Mr. Mular also requested that the Commission take into consideration discussions between his union and BN personnel during the 1987 legislature regarding the amendments of 69-14-202, MCA, and its subsequent application. Mr. Mular testified that BN indicated it would not seek the closure of any station where the agent was within two years of retirement. In return for this promise the TCU and other unions did not oppose the amendment of 69-14-202, MCA. This policy would have avoided both the bumping of junior employees and the upheaval in an agent's life. The agent at Big Sandy is 60 years old and has two years to retirement.

In this docket Mr. Mular testified concerning the agent's manual. He quoted from a section of the manual stating that BN considers the agent very important. Mr. Mular could not provide the date for this manual.

Mr. Mular also testified that it is his opinion that transferring all the agent's work to Centralized Billing Center in Great Falls and Glendive violates Montana law that requires agency service to be available in communities.

He requested that if the Commission allows the closure of the agency it give employee job protection under 69-14-1001, MCA, and take into consideration orders issued by the Maryland and Idaho PSCs in 1981 and 1973 which provided job protection.

Commissioner Dan Rauther. County Commissioner Rauther testified in opposition to the closing of the agency. He stated that the drought year being experienced in the area will decrease the use of the railroads this year. He has heard rumors that the railroad is considering abandoning service into Big Sandy. This is a major concern to the farmers and ranchers in the area.

The Commission recalled BN employee William Allbright and questioned him concerning the potential sale of the line. Mr. Allbright testified that to the best of his knowledge it was not BN's intention to close or sell the Big Sandy line.

FINDINGS OF FACT, ANALYSIS AND DISCUSSION

The Commission finds that Big Sandy received 17 shipments in 1985, 23 shipments in 1986 and 26 shipments in 1987. The agency forwarded 625 shipments in 1985, 646 shipments in 1986 and 1,273 shipments in 1987. The agency is profitable using either the Belt/Carter or the BN formula. No shippers or receivers of freight appeared to testify in opposition to the application.

Based on the absence of shipper testimony and BN's testimony that its Great Falls Centralized Billing Center is willing and able to provide all necessary services, the Commission finds that public convenience and necessity does not require that the Big Sandy agency remain open.

When a railroad demonstrates that it has facilities for meeting shipper needs, some level of shipper support is necessary for a finding that public convenience and necessity require the continuation of agency service. The Commission continues to require all railroads to meet the statutory duty of providing shipping facilities and continually striving to meet shipper needs.

The Commission has always taken the position that the manner in which an agency is staffed is a management decision that will vary with the needs of a particular locality. The Commission has never defined specifically what the staffing of an agency requires and will not do so now. State law requires the staffing of agencies the Commission has not authorized to close. The Commission will entertain shipper complaints that the staffing of any given agency is inadequate.

No rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953) cert. den. 346 U.S. 823.

The Commission concludes that in this case BN has established that public convenience and necessity do not require the continuance of an agency at Big Sandy, Montana.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA. The petition to close the Big Sandy agency is made pursuant to 69-14-202, MCA (1987).

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

3. Public convenience and necessity do not require the continuance of an agency at Big Sandy, Montana.

4. The Commission concludes that Burlington Northern Railroad Company may remove the Big Sandy depot. Prior to its disposal, BN should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building. The Commission directs Burlington Northern Railroad Company to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9235 to close the agency at Big Sandy, Montana and dispose of the depot facility is granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

Done and Dated this 16th day of August, 1988 by a vote of

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Carol Frasier
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.